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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/026,824	02/20/98	NINFREE	R TACOBEL.010A

PM92/0717

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EXAMINER

BARTUSKA, F

ART UNIT	PAPER NUMBER
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3652

14

DATE MAILED: 07/17/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/026,824**

Applicant(s)  
**R.C. Winfree**

Examiner  
**F. J. Bartuska**

Group Art Unit  
**3652**



☒ Responsive to communication(s) filed on Jun 5, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-3, 6, 7, 10-12, 17, 18, 22-26, 31, 44-47, 50, 51, and 55-64 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 31, 50, 51, and 64 is/are allowed.

☒ Claim(s) 1-3, 6, 7, 10, 11, 17, 18, 22-26, 44-47, and 55-63 is/are rejected.

☒ Claim(s) 12 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-3, 6, 7, 10, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al. Tuhro et al show a food preparation line with three sections including a heated storage compartment 22

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in the first section, cooled storage compartments 24 and 91 in the second and third sections, refrigerators 35 and 35a in the second and third sections, package storage compartments 33 in the first and third sections and open package storage compartments 71, 34 and 30 in the first, second and third sections. Tuhro et al do not show a U-shaped arrangement of the sections or a heating device located on an inside corner. Conlan et al show a U-shaped arrangement of a three section counter and a heating device 30 located at an inside corner. Conlan et al disclose in col. 4, lines 8-12 that this food service arrangement can be productively operated by a single operator. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Conlan et al to arrange the sections of Tuhro et al in a U shape and to provide a heating device in an inside corner in order to allow operation of the food service device by a single operator. Further, merely calling for particular elements to be located in particular locations would involve only obvious matters of design choice to one of ordinary skill in the art in view of the design flexibility disclosed in col. 2, lines 19-32 of Tuhro et al.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al as applied to claim 1 above in further view of Baze. Tuhro et al, as modified by Conlan et al, show all the features of the applicants' claimed invention except the taco rail. It would have been obvious to

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one of ordinary skill in the art in view of the taco rail of Baze to provide the device of Tuhro et al with a taco rail to permit the preparation of tacos.

4. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlon et al as applied to claim 1 above. Further, it would have been obvious to one of ordinary skill in the art in view of the ingredient dispensers 52 and 54 of Conlon et al to provide the device of Tuhro et al with ingredient dispensers to aid the food preparation.

5. Claims 44-47, 55-59, 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al and Boyd et al. Tuhro et al show a food preparation line with three sections including a heated storage compartment 22 in the first section, cooled storage compartments 24 and 91 in the second and third sections, refrigerators 35 and 35a in the second and third sections, package storage compartments 33 in the first and third sections and open package storage compartments 71, 34 and 30 in the first, second and third sections. Tuhro et al do not show a U-shaped arrangement of the sections or a packing dispenser. Conlan et al show a U-shaped arrangement of a three section counter and a heating device 30 located at an inside corner. Conlan et al disclose in col. 4, lines 8-12 that this food service arrangement can be productively operated by a single operator. It would have been obvious to one of ordinary skill in the art in view of the showing and teaching of Conlan et al to arrange the

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sections of Tuhro et al in a U shape to allow operation of the food service device by a single operator. Further, it would have been obvious to one of ordinary skill in the art in view of the cup dispensers 56 of Boyd et al to provide the device of Tuhro et al with dispensers to provide cups to contain the food. Moreover, merely calling for particular elements to be located in particular locations would involve only obvious matters of design choice to one of ordinary skill in the art in view of the design flexibility disclosed in col. 2, lines 19-32 of Tuhro et al.

6. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al and Boyd et al as applied to claim 55 above. Further, it would have been obvious to one of ordinary skill in the art in view of the food dispensers 52 and 54 of Conlan et al to provide the device of Tuhro et al with dispensers to aid the food preparation.

7. Claim 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuhro et al in view of Conlan et al and Boyd et al as applied to claim 55 above. Further, it would have been obvious to one of ordinary skill in the art in view of the electronic order display 118 of Conlan et al to provide the device of Tuhro et al with an electronic display for displaying orders to be assembled.

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*Allowable Subject Matter*

8. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

9. The applicants' remarks have been considered but have not been found persuasive because Conlan et al show a heating device in the corner and Conlan et al teach arranging a three section food service system in a U shape to be operated by a single person.

*Conclusion*

10. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the

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advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication should be directed to F. J. Bartuska at telephone number (703) 308-1111.

  
F. J. BARTUSKA  
PRIMARY EXAMINER 7/15/50